

WRIT PETITION No.5167 OF 2005

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ORDER:

The petitioner is the mother of one U. Ravi Srinivas, who is admittedly, an accused in Crime Nos.306 and 342/2003, on the file of Central Crime Station (White Color Crimes), Hyderabad. It appears that the son of the petitioner was carrying on business in software in the name and style of M/s R.S. Infotech, and floated a private limited Company in the name and style of High End Software Solutions Private Limited. In the course of the said business dealings some criminal cases were lodged against him and the investigation is still pending. The petitioner along with her husband and another son by name U. Anil earlier filed W.P.No.16048 of 2003 alleging that they were being harassed by police to extract information as to the whereabouts of the accused in Crime Nos.306 and 342/2003, and seeking a direction to the police to restrain from intimidating them and from interfering with their personal liberty. The Inspector of Police, White collar Offences, Team-II, Central Crime Station, Hyderabad filed a counter-affidavit in the said Writ Petition denying the allegations. Basing on the said counter-affidavit, W.P.No.16048 of 2003 was disposed of by this Court by order dated 4.11.2003 with an observation that the petitioners may cooperate with police in the investigation into the crimes. The grievance of the petitioner in this Writ Petition is that in spite of the order in W.P.No.16048 of 2003, police officials continued their intimidation and threats to her with dire consequences and they also forcibly entered into her residential Flat and removed her personal belongings, such as T.V., Sofa Sets and other furniture, dumped them in one of the rooms, locked and sealed the same. It is alleged that there was neither any prior notice nor the police officials disclosed the reason for seizing the personal belongings of the petitioner. That apart, the respondents - Police Officials, have also instructed the Sub-Registrar, Banjara Hills, not to make any transaction of sale or purchase in relation to the residential Flat belonging to the petitioner bearing No.8-2-293/82/F/60/4, Sri Lakshmi Apartments, Road No.12, Jubilee Hills, Hyderabad. The petitioner claims that the said Flat was purchased by her for a valuable consideration out of her own moneys earned with her own exertion under a registered sale deed, and thus, she is the absolute owner of the said Flat. It is contended that the action of the respondents in seizing her movable property and also attaching the above said immovable property i.e., residential Flat, in

connection with investigation into Crime No.s306 and 342/2003 registered against her son, is arbitrary and illegal and in gross abuse of process of law. It is pleaded that the son of the petitioner - U. Ravi Srinivas, is a major and was carrying on his business, which has no bearing on the property of the petitioner in any manner whatsoever, and therefore, the respondents are not justified in seizing the movable property and attaching the immovable property belonging to the petitioner. Hence, this Writ Petition seeking a declaration that the action of the 1st respondent-Inspector of Police, White Collar Offences, Team-II, Central Crime Station, Hyderabad, in attaching the Flat bearing No. 8-2-293/82/F/60/4, Sri Lakshmi Apartments, Road No.12, Jubilee Hills, Hyderabad, and issuing orders dated 3.02.2005 to the Sub-registrar, Banjara Hills not to make any transaction in relation to the said property as well as the seizure of her movable property as arbitrary and illegal.

The 1st respondent-Inspector of Police, White Collar Offences, Team-II, Central Crime Station, Hyderabad, filed a counter-affidavit stating that the elder son of the petitioner by name U. Ravi Srinivas is an accused in Crime Nos.306 and 342/2003 registered under Sections 420 and 406 of the IPC as well as under Section 3 and 6 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999. It is stated that deposits to the tune of Rs.1.99 crores with M/s R.S. Infotect and High End Software Solutions Private Limited, situated at Kukatpally and Jubilee Hills respectively, were misappropriated and the innocent depositors were cheated and crimes registered in that regard are under investigation. It is further stated that Flat No. 8-2-293/82/F/60/4, Sri Lakshmi Apartments, Road No.12, Jubilee Hills, Hyderabad, was purchased by U. Ravi Srinivas, who was the Managing Director of M/s R.S. Infotech and High End Software Solutions Private Limited, however, the same was registered in the name of his mother i.e., the petitioner herein, by U. Ravi Srinivas at a cost of Rs.8.10 lakhs in a semi-finished condition on 23.08.2001. The said Ravi Srinivas himself issued a cheque for Rs.2.00 lakhs in favour of Mr. V. Rama Subba Rao, who was the Contractor of the said Flat for completing the unfinished work. He also incurred about Rs.20.00 to 30.00 lakhs for finishing the said Flat. All the said amount to the tune of about Rs.40.00 lakhs was collected from the depositors and the same was diverted for purchasing and finishing the said Flat. Hence the averments made by the petitioner are false and without any basis. It is also stated that the said U. Ravi Srinivas was having cash transactions with the petitioner, and as per Form No.18 of ROC, U. Ravi Srinivas, the son of the petitioner, showed his Registered Office at Flat No.4, Sri Laxminilayam, which was registered in the name of the Writ Petitioner. Though the son of the petitioner was enlarged on a conditional bail, he failed to comply with the conditions and

did not appear before the Investigating Officer every day. That apart, having recorded his confessional statement, the respondents seized his movable property in Flat No.60/A as well as agricultural wet land admeasuring Ac.24.75 cents and one Car in the presence of mediators under the cover of *Panchanama*. Subsequently, a letter was also addressed to the concerned Official not to register the seized Flat, which is the subject matter of the proceedings before the Metropolitan Sessions Judge, Hyderabad. It is also stated that the Commissioner of Police, Hyderabad, addressed a letter to the Government requesting to pass an *ad-interim* order in respect of the movable/immovable seized property of U. Ravi Srinivas, which was got registered in the name of his mother (Writ Petitioner), father and brother. In pursuance thereof, the Government issued G.O.Ms.No.195 Home (GENERAL.B) Department, dated 13.09.2005, for attachment of the property in connection with Cr.Nos.306 and 342/2003. Hence, all the allegations made by the petitioner that the respondents forcibly entered into her Flat and removed personal belongings and etc. are false and without any basis, and the Writ Petition is misconceived.

I have heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for the respondents.

It is not in dispute that the son of the petitioner is the accused in Cr.Nos.306 and 342/2003 on the file of Central Crime Station (White Color Crimes), Hyderabad, for the alleged offence under Sections 3 and 5 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999, as well as under Sections 420 and 406 of IPC. The specific case of the respondents is that the property in question, which was registered in the name of the Writ Petitioner, was actually purchased by her son – U. Ravi Srinivas, by misappropriating the funds deposited with M/s R.S. Infotech and High End software Solution and cheating the depositors by making false promises of providing Data Processing Job Work. Admittedly, the investigation into the said crimes is still pending. The respondents state that the son of the Writ Petitioner, U. Ravi Srinivas, surrendered before the Metropolitan Sessions Judge on 25.10.2004, and basing on the confessional statement recorded from him, his movable and immovable property, including the Flat in question, was seized in the presence of mediators under the cover of a *Panchanama*. Having come to know that the property in question was acquired by the accused in Cr.Nos.306 and 342/2003, on the file of Central Crime Station (White Color Crimes), Hyderabad, from the amount deposited by the depositors, the Commissioner of Police, Hyderabad, requested the Government by letter dated 28.03.2005 to issue necessary orders of attachment under the provisions of A.P. Protection Depositors of Financial Establishments Act, 1999 (for short “the Act”). In

pursuance thereof, the Government of Andhra Pradesh issued orders vide G.O.Ms.No.195, dated 13.09.2005, for attachment of the property as shown in Annexures-I & II, pertaining to U. Ravi Srinivas, Managing Director of M/s R.S. Infotech and High End Software Solution, established at Kukatpally and Jubilee Hills under Sections 3 and 5 of the Act, and directed the Commissioner of Police, Hyderabad, who is the competent authority under the Act, to take necessary further action as per the Act and the Rules made thereunder. Annexure-I, appended to G.O.Ms.No.195, dated 13.09.2005, includes movable property and Annexure-II, includes the residential Flat in question, which was registered in the name of the Writ Petitioner.

It is relevant to note that under Section 3 (ii) of the Act, where the Government have reason to believe that any financial establishment is acting in a manner prejudicial to the interests of the depositors with an intention to defraud the depositors; and if the Government are satisfied that such financial establishment is not likely to return the deposits in cash or kind after maturity, the Government may, in order to protect the interests of the depositors of such financial establishment, pass an *ad-interim* order attaching the money or other property alleged to have been procured either in the name of the financial establishment or in the name of any other person from and out of the deposits collected for the financial establishment. As noted above, in exercise of the said power the Government has already passed an order under G.O.Ms.No.195, dated 13.09.2005. Though the residential Flat which is in the name of the Writ Petitioner, the language of Section 3 (ii) of the Act, makes it clear that the Government is competent to pass an order of attachment of the property alleged to have been procured even in the name of any other person out of the deposits collected by the financial establishment. Hence, the impugned attachment cannot be said to be either arbitrary or illegal. Though the learned counsel for the petitioner vehemently contended that the residential Flat in question was purchased by the petitioner out of her own earnings and the same has nothing to do with the property of her son, U. Ravi Srinivas, such a disputed question of fact cannot be enquired into and decided by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India, and therefore, I am not inclined to express any opinion on the said issue. That apart, under 4(3) of the Act, within 15 days from the receipt of order of attachment passed by the Government, the competent authority shall apply to the Special Court constituted under the Act for making the *ad-interim* order absolute, and upon receipt of such an application, the Special Court shall issue notice to the financial establishment or to any other person whose property is attached by the Government under Section 3 of the Act calling upon to show cause as to why the order attachment should not be made absolute. Under Section 7 (2) of the Act, it is

open to the person to whom notice is issued to make an objection to the attachment of the property on the ground that he has an interest in such property. As per sub-section (3) of Section 7, any person claiming interest in the property attached may, notwithstanding that no notice has been served upon him, make an objection to the attachment of his property before the Special Court. If such an objection is received, the Special Court shall proceed to investigate and after affording an opportunity to the person making an objection, to adduce evidence to show that at the time of the attachment he had some interest in the property attached, shall pass an order making the *ad-interim* order of attachment, absolute or cancelling the same.

In the light of the above said provisions under the Act, which provided an *efficacious* alternative remedy, the petitioner ought to have raised her objection before the Special Court constituted under the Act, following the procedure as noted above.

It is also relevant to note that under Section 11 of the Act, against any order passed by the Special Court, a remedy of appeal is provided to this Court. In the circumstances, without exhausting the alternative remedy provided under the Act, the petitioner cannot maintain this Writ Petition under Article 226 of the Constitution of India.

Hence, though I am not inclined to issue a *Writ of Mandamus* as prayed for, I deem it appropriate to dispose of the Writ Petition with a direction to the respondents to take appropriate steps as provided under the Act for making the *ad-interim* order of attachment passed under G.O.Ms.No.195, dated 13.09.2005, absolute, if not already taken, within a period of two weeks from the date of receipt of the order. It is also open to the petitioner to make objections on her own as provided under sub-section (3) of Section 7 of the Act, and place before the Special Court all the relevant material in support of her claim in respect of the residential Flat in question, in which event, the Special Court shall make necessary enquiry and pass appropriate orders in accordance with law.

The Writ Petition is accordingly, disposed of. No costs.

(G. ROHINI, J.)

January , 2006.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.5167 OF 2005

January , 2006.

Between:

Uppalapati Vani. .. Petitioner.

And

Inspector of Police, White collar Offices,

Team-II, Central Crime Station, Detective

Department, Hyderabad and another. .. Respondents.